

Assembly Bill No. 2686

Passed the Assembly August 25, 2016

Chief Clerk of the Assembly

Passed the Senate August 22, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4000.5 of, and to add Section 4001.5 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2686, Mullin. Elections: all-mailed ballot elections.

Existing law generally does not allow special elections to fill vacancies in state offices, the Legislature, or Congress to be conducted wholly by mail. Existing law authorizes, until January 1, 2021, San Diego County to conduct, as a pilot program, an all-mailed ballot special election or special consolidated election (1) to fill a congressional or legislative vacancy if the congressional or legislative district lies wholly within San Diego County, (2) to fill a vacancy in the legislative body or governing body, and (3) for certain local initiative and referendum measures.

This bill would authorize San Diego County to additionally conduct such an all-mailed ballot special election (1) to fill a congressional or legislative vacancy if the congressional or legislative district lies partially within San Diego County, and (2) for the recall of a local officer.

This bill would also authorize, until January 1, 2021, any county to conduct, as a pilot program, an all-mailed ballot special election or special consolidated election to fill a congressional or legislative vacancy only if 50 percent or more of the total number of voters within the county are permanent vote by mail voters and the county board of supervisors adopts a resolution approving the county's participation in the pilot program. The bill would impose specific requirements for an all-mailed ballot special election or special consolidation election to be conducted under the pilot program. If a county conducts an all-mailed ballot special election or special consolidation election pursuant to these provisions, the bill would require the county to submit a report to the Legislature and the Secretary of State that includes certain information regarding the success of the election, including any statistics on the cost to conduct the election.

The people of the State of California do enact as follows:

SECTION 1. Section 4000.5 of the Elections Code is amended to read:

4000.5. (a) Notwithstanding Section 4000 or any other law, as a pilot program, an all-mailed ballot special election or special consolidated election in San Diego County may be conducted by an eligible entity if the special election or special consolidated election is any of the following:

(1) A special election to fill a vacancy in a congressional or legislative office.

(2) A special election to fill a vacancy in the legislative body or governing body.

(3) A special election conducted pursuant to Chapter 2 (commencing with Section 9100), Chapter 3 (commencing with Section 9200), Chapter 4 (commencing with Section 9300), Chapter 5 (commencing with Section 9400), Chapter 6 (commencing with Section 9500) of Division 9, or Chapter 3 (commencing with Section 11200) of Division 11.

(b) A special election or special consolidated election described in paragraphs (1) to (3), inclusive, of subdivision (a) may be conducted wholly as an all-mailed ballot election if all of the following apply:

(1) (A) For a special election to fill a vacancy in a congressional or legislative office, the Board of Supervisors of San Diego County, by resolution, authorizes the use of mailed ballots for the election and the congressional or legislative district lies wholly or partially within San Diego County.

(B) For all other special elections, the legislative body or governing body of the eligible entity, by resolution, authorizes the use of mailed ballots for the election.

(2) The election does not occur on the same date as a statewide direct primary election, statewide general election, or any other election conducted in an overlapping jurisdiction that is not consolidated and conducted wholly by mail.

(3) (A) If the boundaries of the jurisdiction of the eligible entity overlap with the boundaries of a city, at least one ballot dropoff location is provided per city that is open during business hours to receive voted ballots beginning not less than seven days before the date of the election.

(B) The number of dropoff locations in unincorporated areas shall be based on the number of unincorporated registered voters divided by 100,000 (rounded to the next whole number) with no less than one location to be selected.

(C) A ballot dropoff location provided for under this section shall consist of a locked ballot box located in a secure public building that meets the accessibility requirements for a polling place.

(4) On at least one Saturday and Sunday on or after the date the elections official first delivers ballots to voters, the elections official allows any voter to vote the ballot at a satellite location within the jurisdiction of the eligible entity pursuant to Section 3018. The elections official shall determine the hours of operation for each Saturday and Sunday, provided that the satellite location is open to voters for a minimum of six hours on each designated Saturday and Sunday.

(5) (A) At least one polling place is provided per eligible entity or the polling places are fixed in a manner so that there is one polling place for every 10,000 registered voters within the jurisdiction of the eligible entity, as determined on the 88th day before the day of the election, whichever results in more polling places. A polling place shall allow a voter to request and vote a ballot between 7 a.m. and 8 p.m. on the day of the election.

(B) The polling places provided under this section shall be established in accordance with the accessibility requirements described in Article 5 (commencing with Section 12280) of Chapter 3 of Division 12, the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), and shall, to the extent possible, ensure that access is evenly distributed throughout the jurisdiction of the eligible entity.

(C) The polling places provided under this section shall be established at accessible locations and shall be equipped with voting units or systems that are accessible to individuals with disabilities and that provide the same opportunity for access and participation as is provided to voters who are not disabled, including the ability to vote privately and independently in accordance with Sections 12280 and 19240.

(D) If a polling place consolidates one or more precincts for which the elections official is required to recruit precinct board members who are fluent in a language in addition to English pursuant to the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), the elections official shall ensure that the polling place is staffed by precinct board members who speak that language.

(E) If a polling place consolidates one or more precincts for which the elections official is required to recruit precinct board members who are fluent in a language in addition to English pursuant to subdivision (c) of Section 12303, the elections official shall make reasonable efforts to ensure that the polling place is staffed by precinct board members who speak that language.

(6) (A) The elections official delivers to each voter all supplies necessary for the use and return of the mail ballot, including an envelope for the return of the voted mail ballot with postage prepaid.

(B) The elections official delivers to each voter, with either the sample ballot sent pursuant to Section 13303 or with the voter's ballot, all of the following:

(i) A notice, translated in all languages required under subdivision (c) of Section 14201 and Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), that informs voters of all of the following:

(I) An all-mailed ballot election is being conducted and each eligible voter will receive a ballot by mail.

(II) The voter may cast a ballot in person at a satellite location provided for under paragraph (4) or at a polling place on election day.

(III) The voter may request the elections official to send a vote by mail ballot in a language other than English pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or a facsimile copy of the ballot printed in a language other than English pursuant to Section 14201.

(ii) A list of the ballot dropoff locations, satellite locations, and polling places established pursuant to this section. The list shall also be posted on the Internet Web site of the elections official.

(iii) A postage-paid postcard that the voter may return to the elections official for the purpose of requesting a vote by mail ballot in a language other than English.

(7) (A) The elections official submits to the Secretary of State a voter education and outreach plan to be implemented by the eligible entity for any election conducted pursuant to this section. The voter education and outreach plan shall include, but shall not be limited to, all of the following:

(i) One education and outreach meeting that includes representatives, advocates, and other stakeholders representing each community for which the eligible entity is required to provide voting materials and assistance in a language other than English under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(ii) One education and outreach meeting that includes representatives from community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities.

(iii) At least one in-person bilingual voter education workshop for each language in which the eligible entity is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(iv) At least one in-person voter education workshop to increase accessibility for participation of eligible voters with disabilities.

(v) A toll-free voter assistance hotline maintained by the elections official that is operational no later than the date that vote by mail ballots are mailed to voters until 5 p.m. on the day after the special election. The toll-free voter assistance hotline shall provide assistance to voters in all languages in which the eligible entity is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(vi) At least one public service announcement in the media, including newspapers, radio, and television, that serve English-speaking citizens for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.

(vii) At least one public service announcement in the media, including newspapers, radio, and television, that serves non-English-speaking citizens for each language in which the eligible entity is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting

Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.

(viii) A voter education social media strategy that is developed in partnership with community organizations and individuals that advocate on behalf of, or provide services to, non-English-speaking individuals and individuals with disabilities.

(B) The voter education and outreach plan shall be posted on the Internet Web site of the Secretary of State and on the Internet Web site of the elections official.

(c) Except as otherwise provided in this section, the election day procedures shall be conducted in accordance with Division 14 (commencing with Section 14000).

(d) The elections official may provide, at his or her discretion, additional ballot dropoff locations and polling places for purposes of this section.

(e) The return of voted mail ballots is subject to Sections 3017 and 3020.

(f) (1) If the eligible entity conducts a special election pursuant to this section, it may process vote by mail ballot return envelopes beginning 29 days before the election. Processing vote by mail ballot return envelopes may include verifying the voter's signature on the vote by mail ballot return envelope and updating voter history records.

(2) If the eligible entity conducts a special election pursuant to this section, it may start to process vote by mail ballots on the 10th business day before the election. Processing vote by mail ballots includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, but under no circumstances shall a vote count be accessed or released until 8 p.m. on the day of the election.

(g) Results of any vote by mail ballot tabulation or count shall not be released before the close of the polls on the day of the election.

(h) For the sole purpose of reporting the results of an election conducted pursuant to this section, upon completion of the ballot count, the elections official shall divide the jurisdiction into precincts pursuant to Article 2 (commencing with Section 12220) of Chapter 3 of Division 12 and shall prepare a statement of the

results of the election in accordance with Sections 15373 and 15374.

(i) The elections official shall compile an index, list, or file of all persons who voted in an election conducted pursuant to this section. If the elections official uses data-processing equipment to compile the index, list, or file, he or she shall retain an accurate copy of that index, list, or file in electronic format for a period of 10 years.

(j) (1) If an election is conducted pursuant to this section, the eligible entity shall report to the Legislature and to the Secretary of State regarding the success of the election, including, but not limited to, all of the following:

(A) Any statistics on the cost to conduct the election.

(B) The turnout of different populations, including, but not limited to, and to the extent possible, the population categories of race, ethnicity, language preference, age, gender, disability, permanent vote by mail status, and political party preference.

(C) The number of ballots that were not counted and the reasons they were rejected.

(D) Voter fraud.

(E) Any other problems that become known to the eligible entity during the election or canvass.

(2) Whenever possible, using the criteria set forth in paragraph (1), the report shall compare the election conducted pursuant to this section to similar elections not conducted pursuant to this section in the same jurisdiction or comparable jurisdictions.

(3) Within six months after the date of the election or before the date of a subsequent election conducted pursuant to this section, whichever is sooner, the eligible entity shall do all of the following with respect to the report required by this subdivision:

(A) Submit the report to the Legislature in compliance with Section 9795 of the Government Code.

(B) Submit the report to the Secretary of State.

(C) Post the report on the Internet Web site of the elections official.

(k) For purposes of this section, “eligible entity” means both of the following:

(1) San Diego County.

(2) A city, school district, community college district, special district, or other district or political subdivision organized pursuant

to state law, whose boundaries are located wholly or partially within San Diego County.

(l) An election conducted pursuant to this section is not subject to Section 4001.5.

(m) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 2. Section 4001.5 is added to the Elections Code, to read:

4001.5. (a) Notwithstanding Section 4000 or any other law, as a pilot program, a county may conduct an all-mailed ballot special election or special consolidated election if the special election or special consolidated election is a special election to fill a vacancy in a congressional or legislative office.

(b) A special election or special consolidated election described in subdivision (a) may be conducted wholly as an all-mailed ballot election if all of the following apply:

(1) (A) The county board of supervisors, by resolution, approves the county's participation in the pilot program established by this section. A county may only participate in the pilot program if the percentage of permanent vote by mail voters in the county equals or exceeds 50 percent of the total number of voters in the county, as determined at the most recent statewide general election.

(B) If a county board of supervisors adopts a resolution pursuant to subparagraph (A), the county board of supervisors shall transmit the resolution to the Secretary of State within 10 days of adopting the resolution. Within 10 days of receiving a resolution adopted pursuant to subparagraph (A), the Secretary of State shall notify the Voting Accessibility Advisory Committee, established pursuant to Section 2053, and the Language Accessibility Advisory Committee, established pursuant to Section 2600, of the county's participation in the pilot program.

(2) The county board of supervisors, by resolution, authorizes the use of mailed ballots for the election and the congressional or legislative district lies wholly or partially within the county.

(3) The election does not occur on the same date as a statewide direct primary election, statewide general election, or any other election conducted in an overlapping jurisdiction that is not consolidated and conducted wholly by mail.

(4) (A) At least one ballot dropoff location is provided per city that is open during business hours to receive voted ballots beginning not less than seven days before the date of the election.

(B) The number of dropoff locations in unincorporated areas shall be based on the number of unincorporated registered voters divided by 100,000 (rounded to the next whole number) with no less than one location to be selected.

(C) A ballot dropoff location provided for under this section shall consist of a locked ballot box located in a secure public building that meets the accessibility requirements for a polling place.

(5) On at least one Saturday and Sunday on or after the date the county elections official first delivers ballots to voters, the county elections official allows any voter to vote the ballot at a satellite location within the county pursuant to Section 3018. The county elections official shall determine the hours of operation for each Saturday and Sunday, provided that the satellite location is open to voters for a minimum of six hours on each designated Saturday and Sunday.

(6) (A) The polling places are fixed in a manner so that there is one polling place for every 10,000 registered voters within the county, or the portion of the county in which the special election is being held, as determined on the 88th day before the day of the election. A polling place shall allow a voter to request and vote a ballot between 7 a.m. and 8 p.m. on the day of the election.

(B) The polling places provided under this section shall be established in accordance with the accessibility requirements described in Article 5 (commencing with Section 12280) of Chapter 3 of Division 12, the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), and shall, to the extent possible, ensure that access is evenly distributed throughout the county, or the portion of the county in which the special election is being held.

(C) The polling places provided under this section shall be established at accessible locations and shall be equipped with voting units or systems that are accessible to individuals with disabilities and that provide the same opportunity for access and participation as is provided to voters who are not disabled,

including the ability to vote privately and independently in accordance with Sections 12280 and 19240.

(D) The county elections official shall consider proximity to public transportation in determining the polling places to provide under this section.

(E) If a polling place consolidates one or more precincts for which the county elections official is required to recruit precinct board members who are fluent in a language in addition to English pursuant to the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), the county elections official shall ensure that the polling place is staffed by precinct board members who speak that language.

(F) If a polling place consolidates one or more precincts for which the county elections official is required to recruit precinct board members who are fluent in a language in addition to English pursuant to subdivision (c) of Section 12303, the county elections official shall make reasonable efforts to ensure that the polling place is staffed by precinct board members who speak that language.

(7) (A) The county elections official delivers to each voter all supplies necessary for the use and return of the mail ballot, including an envelope for the return of the voted mail ballot with postage prepaid.

(B) In addition to the items required to be delivered to each voter under subparagraph (C), the county elections official delivers to each voter a notice, translated in all languages required under subdivision (c) of Section 14201 and Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), that informs voters that an all-mailed ballot election is being conducted. The county elections official may send only one notice to a household if multiple registered voters reside within that household.

(C) The county elections official delivers to each voter, with the sample ballot sent pursuant to Section 13303 and with the voter's ballot, all of the following:

(i) A notice, translated in all languages required under subdivision (c) of Section 14201 and Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.), that informs voters of all of the following:

(I) An all-mailed ballot election is being conducted and each eligible voter will receive a ballot by mail.

(II) The voter may cast a ballot in person at a satellite location provided for under paragraph (5) or at a polling place on election day.

(III) The voter may request the county elections official to send a vote by mail ballot in a language other than English pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or a facsimile copy of the ballot printed in a language other than English pursuant to Section 14201.

(ii) A list of the ballot dropoff locations, satellite locations, and polling places established pursuant to this section. The list shall also be posted on the Internet Web site of the county elections official.

(iii) A postage-paid postcard that the voter may return to the county elections official for the purpose of requesting a vote by mail ballot in a language other than English.

(8) (A) The county elections official submits to the Secretary of State a voter education and outreach plan to be implemented by the county for any election conducted pursuant to this section. The voter education and outreach plan shall include, but shall not be limited to, all of the following:

(i) One education and outreach meeting that includes representatives, advocates, and other stakeholders representing each community for which the county is required to provide voting materials and assistance in a language other than English under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(ii) One education and outreach meeting that includes representatives from community organizations and individuals that advocate on behalf of, or provide services to, individuals with disabilities.

(iii) At least one in-person bilingual voter education workshop for each language in which the county is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(iv) At least one in-person voter education workshop to increase accessibility for participation of eligible voters with disabilities.

(v) A toll-free voter assistance hotline maintained by the county elections official that is operational no later than the date that vote by mail ballots are mailed to voters until 5 p.m. on the day after

the special election. The toll-free voter assistance hotline shall provide assistance to voters in all languages in which the county is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(vi) At least one public service announcement in the media, including newspapers, radio, and television, that serve English-speaking citizens for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.

(vii) At least one public service announcement in the media, including newspapers, radio, and television, that serve non-English-speaking citizens for each language in which the county is required to provide voting materials and assistance under subdivision (c) of Section 14201 and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) for purposes of informing voters of the upcoming election and promoting the toll-free voter assistance hotline.

(viii) A voter education social media strategy that is developed in partnership with community organizations and individuals that advocate on behalf of, or provide services to, non-English-speaking individuals and individuals with disabilities.

(ix) The registration rates, participation rates, and rejection rates, including the reasons for rejection, of permanent vote by mail voters and in-person voters for the county. If the information is readily available, the county elections official shall include any statistics on the turnout of different populations, including, but not limited to, the population categories of race, ethnicity, language preference, age, gender, and disability. If the data reflects significant disparities in voter accessibility and participation, the county elections official shall include a statement of how he or she plans to address each disparity.

(B) The voter education and outreach plan shall be posted on the Internet Web site of the Secretary of State and on the Internet Web site of the county elections official.

(9) (A) The county elections official establishes a community election advisory committee that consists of community members representing minority groups covered under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) and subdivision (c) of Section 14201 and voters with disabilities including, but not

limited to, mobility, sensory, physical, and mental disabilities. In lieu of a community election advisory committee, the county elections official may establish both a local voting accessibility advisory committee pursuant to the guidelines promulgated by the Secretary of State and a local language accessibility advisory committee. For purposes of this section, a local language accessibility advisory committee shall consist of community members representing minority groups covered under the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) and subdivision (c) of Section 14201.

(B) The advisory committee or committees described in subparagraph (A) shall hold at least one meeting in the year prior to an all-mailed ballot election conducted pursuant to this section.

(c) Except as otherwise provided in this section, the election day procedures shall be conducted in accordance with Division 14 (commencing with Section 14000).

(d) The county elections official may provide, at his or her discretion, additional ballot dropoff locations and polling places for purposes of this section.

(e) The return of voted mail ballots is subject to Sections 3017 and 3020.

(f) Participating in the pilot program established by this section does not preclude the use of a remote accessible vote by mail system.

(g) (1) If the county conducts a special election pursuant to this section, it may process vote by mail ballot return envelopes beginning 29 days before the election. Processing vote by mail ballot return envelopes may include verifying the voter's signature on the vote by mail ballot return envelope and updating voter history records.

(2) If the county conducts a special election pursuant to this section, it may start to process vote by mail ballots on the 10th business day before the election. Processing vote by mail ballots includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, but under no circumstances shall a vote count be accessed or released until 8 p.m. on the day of the election.

(h) Results of any vote by mail ballot tabulation or count shall not be released before the close of the polls on the day of the election.

(i) For the sole purpose of reporting the results of an election conducted pursuant to this section, upon completion of the ballot count, the county elections official shall divide the county, or the portion of the county in which the special election is being held into precincts pursuant to Article 2 (commencing with Section 12220) of Chapter 3 of Division 12 and shall prepare a statement of the results of the election in accordance with Sections 15373 and 15374.

(j) The county elections official shall compile an index, list, or file of all persons who voted in an election conducted pursuant to this section. If the county elections official uses data-processing equipment to compile the index, list, or file, he or she shall retain an accurate copy of that index, list, or file in electronic format for a period of 10 years.

(k) (1) If an election is conducted pursuant to this section, the county shall report to the Legislature and to the Secretary of State regarding the success of the election, including, but not limited to, all of the following:

(A) Any statistics on the cost to conduct the election.

(B) The turnout of different populations, including, but not limited to, and to the extent possible, the population categories of race, ethnicity, language preference, age, gender, disability, permanent vote by mail status, and political party preference.

(C) The number of ballots that were not counted and the reasons they were rejected.

(D) Voter fraud.

(E) Any other problems that become known to the county during the election or canvass.

(2) Whenever possible, using the criteria set forth in paragraph (1), the report shall compare the election conducted pursuant to this section to similar elections not conducted pursuant to this section in the same county or comparable counties.

(3) Within six months after the date of the election or before the date of a subsequent election conducted pursuant to this section, whichever is sooner, the county shall do all of the following with respect to the report required by this subdivision:

(A) Submit the report to the Legislature in compliance with Section 9795 of the Government Code.

(B) Submit the report to the Secretary of State.

(C) Post the report on the Internet Web site of the county elections official.

(*l*) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

Approved _____, 2016

Governor